

RESOLUTION NO. A-_____

1 BE IT RESOLVED by the City Council of the City of Lincoln, Nebraska:

2 That the agreement titled Prairie Village North Conditional Annexation and Zoning
3 Agreement, which is attached hereto, marked as Attachment "A" and made a part hereof by
4 reference, between the City of Lincoln and Dubois Land LLC, Prairie Village North LLC, Prairie
5 Home Builders Inc., and Ryland Group LLC, outlining certain conditions and understandings
6 relating to the annexation of approximately 60.29 acres along with approximately 23 acres located
7 at the southeast corner of N. 84th and Adams Street under a Planned Unit Development, is
8 approved.

9 BE IT FURTHER RESOLVED that the Mayor is authorized to execute the Annexation
10 Agreement on behalf of the City.

11 BE IT FURTHER RESOLVED that the City Clerk is directed to return two fully executed
12 copies of this Agreement to Rick Peo, Chief Assistant City Attorney, for distribution to the Owners.

13 BE IT FURTHER RESOLVED that the City Clerk is directed to record the Annexation
14 Agreement or a summary memorandum thereof with the Register of Deeds, filing fees to be paid
15 by the Owners.

Introduced by:

Approved as to Form and Legality:

City Attorney

Approved this ____ day of _____, 2006:

Mayor

PRAIRIE VILLAGE NORTH CONDITIONAL ANNEXATION AND ZONING AGREEMENT

This Prairie Village North Conditional Annexation and Zoning Agreement (“Agreement”) is made and entered into this _____ day of _____, 2006, by and between **Dubois Land, LLC**, a Nebraska limited liability company; **Prairie Village North, LLC**, a Nebraska limited liability company; **Prairie Home Builders, Inc.**, a Nebraska corporation; and **Ryland Group, LLC**, a Nebraska limited liability company hereinafter collectively referred to as “Owner”; and the **City of Lincoln, Nebraska**, a municipal corporation, hereinafter referred to as “City.”

R E C I T A L S

A. Owner has requested the City to annex approximately 60.29 acres more or less of land generally located Northeast of the intersection of 84th and Adams Street. The approximately 60.29 acres is hereinafter referred to as the “Annexed Property” and is legally described on Exhibit “A” attached hereto.

B. Owner also owns approximately 23 acres more or less of land generally located Southeast of the intersection of 84th and Adams Street. This tract is legally described in the attached Exhibit “A” and is hereinafter referred to as the “Corner Property”. The Corner Property was previously annexed by the City, along with other land pursuant to the Prairie Village Conditional Annexation and Zoning Agreement dated August 19, 2002 and recorded with the Register of Deeds of Lancaster County, Nebraska on September 3, 2002 as Instrument No. 2002-058562 (“PV Agreement”). The PV Agreement was entered into by and between the

City, Faith Evangelical Lutheran Church, Lincoln, Nebraska (“Church”), Owner and another party to whom the Owner is now the successor.

C. The Annexed Property together with the Corner Property are referred to collectively in this Agreement as “Property”.

D. Owner has requested a Change of Zone to rezone the Property from AG Agriculture District to R-3 and R-5 Residential District, B-2 Planned Neighborhood Business District, and O-3 Office Park District under a Planned Unit Development designation authorizing 1,161 dwelling units and 585,000 square feet of commercial retail and office space (which is generally allocated as 285,000 square feet south of Adams and 300,000 square feet north of Adams, 50,000 square feet of which is contingent on meeting incentive criteria) (“Prairie Village North Planned Unit Development”).

E. Pursuant to the Conditional Annexation and Zoning Agreement for Regent Heights 1st Addition and Northern Lights Addition (“Regent Heights Agreement”), the City and the developers of Regent Heights 1st Addition and Northern Lights Addition constructed certain sanitary sewer trunk lines (hereinafter “Sewer A” and “Sewer B”) to sewer 254 acres of land within the preliminary plats of Regent Heights 1st Addition and Northern Lights Addition. Said Sewer A and Sewer B can also sewer 746 acres of land outside of the boundaries of the preliminary plats for Regent Heights 1st Addition and Northern Lights Addition, including a portion of the Owner’s Annexed Property.

F. In the Regent Heights Agreement, the City agreed to charge owners of land outside the boundaries of the preliminary plats for Regent Heights 1st Addition and Northern Lights Addition who benefit not from maintenance of Sewer A and Sewer B, but from the extension of Sewer A and Sewer B into an entirely new area, including that portion of the Owner’s Annexed Property that may be served by those sewer extensions, a fair share of the cost of Sewer A and Sewer B based upon a per-acre formula or some other fair share formula approved by the City.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the parties do agree as follows:

1. **Annexation by the City.** The City agrees to annex the Annexed Property.

2. **Change of Zone.** The City agrees to approve the Change of Zone and Planned Unit Development designation for the Property.

3. **Water Main.**

A. Construction. Owner agrees to complete construction of a 16-inch water main in Adams Street from approximately 81st Street east to 94th Street and a 12-inch water main internally through the Property. The water mains shall be constructed through the City's executive order process and construction contracts shall be let only after competitive bidding in accordance with City procedures.

B. Reimbursement. City agrees to use its best efforts to reimburse Owner without interest for the cost of the 16-inch water main (except for the City's fixed fee for engineering services) no later than the end of the City's Fiscal Year 2006/2007. The City further agrees to reimburse Owner for the difference between the cost of the internal 12-inch water main and the cost of a typical 6-inch water main abutting a residential area and the cost of a typical 8-inch water main abutting commercial area following completion of construction.

C. Condemnation. If easements are necessary to install the water main on the south side of Adams from 91st to 94th Street the City agrees to use its condemnation authority, if necessary, for such acquisition and shall bear all costs and expenses of the condemnation proceeding.

4. **Sanitary Sewer.**

A. Construction. The existing Regent Heights/Northern Lights Sanitary Trunk Sewer north of Adams Street will need to be relocated into the planned street right-of-ways. The owner shall bear all costs for relocating the existing Regent Heights/Northern Lights Sanitary Trunk Sewer north of Adams Street into the street right-of-ways. The phasing and timing of the sewer relocation shall be acceptable to the City's Department of Public Works and Utilities. The

design of the relocation project shall be subject to the approval of the City's Department of Public Works and Utilities. Construction shall be through the City's executive order process.

B. No Reimbursement for Site-Related Improvements. Owner agrees that Owner shall construct the site-related improvements consisting of the relocation of the existing Regent Heights/Northern Lights Sanitary Trunk Sewer into the street right-of-ways at the Owner's own cost and expense without any reimbursement from the City.

C. Regent Heights Connector. Owner acknowledges and agrees to plan for and provide easements acceptable to the City for a future interconnective sanitary sewer trunk line known as the "Regent Heights Connector." The Regent Heights Connector will be between the relocated sanitary sewer trunk line within Prairie Village North and/or future annexed land and the future Stevens Creek Trunk Line.

5. North 84th Street Improvements.

A. Deferred Construction. The Arterial Street Impact Fee Facility Improvements and Site-Related Street Improvements shown on Exhibit "B(S)" shall be constructed by Owner at Owner's own cost and expense in the time lines provided below:

(1) Arterial Street Impact Fee Facility Improvements.

(a) Northbound right-turn lane and extended southbound left-turn lane in 84th Street at Windmill Drive at the same time as Windmill Drive is constructed.

(2) Site-Related Street Improvements.

(a) Westbound left-turn lane in Windmill Drive at North 84th Street at the same time as Windmill Drive is constructed.

B. Construction Requirements. Turn lanes at all intersections shall be constructed at a length and width acceptable to the City's Department of Public Works and Utilities. The design of the North 84th Street Improvements shall be subject to the approval of the City's Department of Public Works and Utilities. Construction shall be through the City's executive order process and construction contracts shall be let only after competitive bidding in accordance with City procedures.

If any of the improvements required in this Paragraph 5 are impossible or impractical to construct prior to completion of the LES Line Relocation described in Paragraph 14 below, the City agrees that it will not deny or hold up any occupancy permits or final plats because of the delay in completing the LES Line Relocation.

6. Adams Street Improvements.

A. Adams Street Site-Related Improvements East of 84th Street. The Adams Street Site-Related Improvements shown on Exhibit “C(S)” shall be constructed by Owner at Owner’s own cost and expense. The improvements shall be constructed prior to the issuance of any occupancy permit for any commercial use south of Adams Street that takes access to 87th Street.

B. Construction Requirements. Turn lanes at all intersections shall be constructed at a length and width acceptable to the City’s Department of Public Works and Utilities. The design of the Adams Street Improvements east and west of 84th Street shall be subject to the approval of the City’s Department of Public Works and Utilities. Construction shall be through the City’s executive order process and construction contracts shall be let only after competitive bidding in accordance with City procedures.

7. Traffic Signals.

A. Installation. Owner shall design, construct and install at Owner’s own cost and expense Site-Related Street Traffic Signals in the following intersections:

(1) In 84th Street at Windmill Drive. Installation shall be required when warrants are met and the Department of Public Works and Utilities has recommended installation of the traffic signal.

(2) In Adams Street at 87th Street. Installation shall be required when warrants are met and the Department of Public Works and Utilities has recommended installation of the traffic signal.

B. Contribution for Arterial Street Impact Fee Facility Traffic Signal in 84th Street at Leighton Avenue. The City shall install a traffic signal in the intersection in 84th Street

and Leighton Avenue when warrants are met and the Department of Public Works and Utilities recommends installation of the traffic signal. Owner shall contribute and pay the City 25% of the cost. Owner understands that other developers have also agreed to contribute to the cost of this traffic signal.

C. Design. The design of the traffic signals referred to in 7.A. above shall be approved by the City's Department of Public Works and Utilities. Construction shall be through the City's executive order process.

8. Reimbursement for Arterial Street Impact Fee Facility Improvements.

A. Directed Arterial Street Impact Fees. The City agrees to reimburse Owner for the cost to construct the North 84th Street Arterial Street Impact Fee Facility Improvements (§5.A.(1)(a)), the Adams Street Impact Fee Facility Improvements (§6.A.(6)), and the Arterial Street Impact Fee Facility Traffic Signals (§7.B.) without interest from Arterial Street Impact Fees collected against the entire development of the Property up to the Directed Arterial Street Impact Fee Amount of \$1,699,520 which reflects the amount attributable to 100% development of the proposed development of the Property in 2006 based upon the 2006 Arterial Street Impact Fee Schedule. Reimbursement shall be subject to the following conditions:

(1) Said reimbursement shall be paid quarterly from Impact Fees actually received from this development, and from development occurring on the land included in the PV Agreement and on Owner's property located south of the Murdock Trail;

(2) Any reimbursement to be paid from Impact Fees shall not constitute a general obligation or debt of the City.

B. Owner's Cost in Excess of Directed Arterial Street Impact Fee Amount. In the event Owner's cost of construction of the improvements described in A above are in excess of the Arterial Street Impact Fee Amount (\$1,699,520), City agrees to use its best efforts to reimburse Owner with interest for the excess cost from other Arterial Street Impact Fees collected from this and/or other developments within the same benefit district within eleven (11)

years from the date the improvements described in A above are substantially completed as determined by the City, subject to the following conditions:

- (1) The reimbursement shall be repaid quarterly from Arterial Street Impact Fees collected from the same benefit district the Property is located in;
- (2) Owner shall not be entitled to any reimbursement of said costs in excess of Impact Fees actually received; and
- (3) Any reimbursement to be paid from such Impact Fees shall not constitute a general obligation or debt of the City.

Interest on the outstanding balance shall draw interest at the rate of two percent (2%) per annum, provided, however, interest shall not begin to accrue until Owner advances any excess funds to the City. Notwithstanding the above, the City's best efforts to reimburse Owner with Impact Fees collected from other developments within the same benefit district does not restrict the City from agreeing to reimburse future developers within the same benefit district from Directed Impact Fees collected against the entire development of their property if those developers fund the construction of Impact Fee Facility Improvements. If a developer does not fund the construction of Impact Fee Facility Improvements, the Impact Fees that are collected from that development shall be used to pay the oldest reimbursement obligation that the City may have in the same benefit district.

9. No Reimbursement for Site-Related Street Improvements. Owner agrees that Owner shall construct the Site-Related Street Improvements and Site-Related Traffic Signals at Owner's own cost and expense without any reimbursement from the City.

10. Additional Street Right-of-Way.

A. Dedication. Owner agrees to dedicate at no cost to the City the additional right-of-way needed to provide the amount of right-of-way shown on the approved site plan for the Planned Unit Development for the North 84th Street Improvements and the Adams Street Improvements abutting the Annexed Property. Owner further agrees to dedicate or convey at no cost to the City the temporary and permanent easements for construction of said improvements.

B. Condemnation. City agrees to use its condemnation authority if necessary to acquire at the City's cost the additional right-of-way easements needed to provide the amount of right-of-way shown on the approved site plan for the Planned Unit Development for the North 84th Street Improvements and the Adams Street Improvements not abutting the Annexed Property.

11. Sewer A and Sewer B Connection Fee.

A. Payment. Owner understands and acknowledges that the Property was made sewerable by the construction of Sewer A and Sewer B described in Recital G above and that Owner did not participate in, nor contribute Owner's fair share of the cost of construction of Sewer A and Sewer B to serve the Property. Owner therefore agrees to pay a connection fee of \$1,570.00 per acre times the 60.29 acres being annexed for a total connection fee of \$94,655.30.

B. Reimbursement.

(1) Directed Wastewater Impact Fees. The City agrees to reimburse Owner for the Sewer A and Sewer B connection fee from Directed Wastewater Impact Fees up to the Directed Wastewater Impact Fee Amount of \$243,767 which reflects the amount attributable to 100% development of the proposed development of the Property in 2006 based upon the 2006 Wastewater Impact Fee Schedule. Reimbursement shall be subject to the following conditions:

(a) The reimbursement shall be repaid quarterly from Wastewater Impact Fees collected from the Property;

(b) Owner shall not be entitled to any reimbursement of said connection fee in excess of Impact Fees actually received;

(c) Any reimbursement to be paid from such Impact Fees shall not constitute a general obligation or debt of the City.

(2) Owner's Cost in Excess of Directed Wastewater Impact Fee Amount. In the event Owner's costs for the Sewer A and Sewer B connection fee are in excess of the Directed Wastewater Impact Fee Amount of \$243,737, the City agrees to use its best efforts to

reimburse Owner with interest for the excess costs from other Wastewater Impact Fees collected from this and/or other developments within the same benefit district within eleven years from the date the connection fee is paid. Reimbursement from Impact Fees shall be subject to the same conditions listed in subparagraph B.(1) above. Interest on the outstanding balance shall draw interest at the rate of 2% per annum, provided, however interest shall not begin to accrue until Owner pays the connection fee. Notwithstanding the above, the City's best efforts to reimburse Owner with Impact Fees collected from other development within the same benefit district does not restrict the City from agreeing to reimburse future developers within the same benefit district from Directed Impact Fees collected against the entire development of their property if those developers fund the construction of Wastewater Impact Fee Facility Improvements. If a developer does not fund the construction of Wastewater Impact Fee Facility Improvements, the Impact Fees that are collected from that development shall be used to pay the older reimbursement obligation that the City may have in the same benefit district.

12. Restriction on Development in the Floodplain. The Stevens Creek Floodplain and Floodprone Area originally shown within the Prairie Village North PUD has been removed from the PUD and the south side of the boundaries of the Annexed Property.

13. Lincoln Electric System ("LES") Easement. Relocation of the existing LES 35k overhead transmission line is necessary to accommodate the North 84th Street Improvements described in Paragraph 6 above ("LES Line Relocation"). The LES Line Relocation is an Arterial Street Impact Fee Facility Improvement. Owner agrees in the event there is no feasible alternative to dedicate at no cost to the City a 30-foot wide easement immediately east of the existing 115k LES transmission line easement in order to relocate the existing LES 35k overhead transmission line to accommodate the new right-of-way for North 84th Street. The Owner shall advance all the costs of relocating the 35k transmission line as an overhead transmission line into the new easement area subject to reimbursement pursuant to Paragraph 9 above.

Notwithstanding the above, the Owner and City in cooperation with LES prefer to replace the older towers supporting the LES 115k transmission line with new mono poles and bury the smaller transmission lines which would eliminate the need for the dedication of the above-described 30-foot wide easement for the LES 35k transmission line. Under this alternative, Owner's one-third of the cost of the relocation is not reimbursable.

14. PV Agreement Amendments. Owner and City agree that many of the improvements and obligations set forth in the PV Agreement are impliedly amended by this Agreement. Therefore the City and Owner agree that the PV Agreement is expressly amended and superceded as follows:

A. Paragraph 4, Public Water Mains, A. Adams Street, is replaced in its entirety by the provisions of Paragraph 3 of this Agreement.

B. Paragraph 5, Street Improvements, A. Adams Street, is replaced in its entirety by the provisions of Paragraph 6 of this Agreement. The City agrees to use its best efforts to maintain the Church's legal obligation under the PV Agreement to contribute towards the cost of the Adams Street Improvements.

C. Paragraph 6, Sewer Main Extension, is amended by adding the following language:

B. Reimbursement.

(1) Directed Wastewater Impact Fees. The City agrees to reimburse Owner for the Sewer A and Sewer B connection fee from Directed Wastewater Impact Fees up to the Directed Wastewater Impact Fee Amount of \$158,576 which reflects the amount attributable to 100% development of the proposed development of the Property in 2006 based upon the 2006 Wastewater Impact Fee Schedule. Reimbursement shall be subject to the following conditions:

(a) The reimbursement shall be repaid quarterly from Wastewater Impact Fees collected from the Property;

(b) Owner shall not be entitled to any reimbursement of said connection fee in excess of Impact Fees actually received;

(c) Any reimbursement to be paid from such Impact Fees shall not constitute a general obligation or debt of the City.

(2) Owner's Cost in Excess of Directed Wastewater Impact Fee Amount. In the event Owner's costs for the Sewer A and Sewer B connection fee are in excess of the Directed Wastewater Impact Fee Amount of \$158,576, the City agrees to use its best efforts to reimburse Owner with interest for the excess costs from other Wastewater Impact Fees collected from this and/or other developments within the same benefit district within eleven years from the date the connection fee is paid. Reimbursement from Impact Fees shall be subject to the same conditions listed in subparagraph B.(1) above. Interest on the outstanding balance shall draw interest at the rate of 2% per annum, provided, however interest shall not begin to accrue until Owner pays the connection fee. Notwithstanding the above, the City's best efforts to reimburse Owner with Impact Fees collected from other development within the same benefit district does not restrict the City from agreeing to reimburse future developers within the same benefit district from Directed Impact Fees collected against the entire development of their property if those developers fund the construction of Wastewater Impact Fee Facility Improvements. If a developer does not fund the construction of Wastewater Impact Fee Facility Improvements, the Impact Fees that are collected from that development shall be used to pay the older reimbursement obligation that the City may have in the same benefit district.

D. Paragraph 7, Additional Contributions, is deleted in its entirety as it has been replaced by the provisions of Paragraphs 5 and 7 of this Agreement.

E. Subparagraphs B and D of Paragraph 8, Security, are deleted in their entirety as these provisions have been replaced by the provisions of Paragraphs 5 and 7 of this Agreement.

F. Paragraph 10, Credit Against Future Impact Fees, is deleted in its entirety as it has been replaced by the provisions in Paragraphs 5 and 7 of this Agreement.

15. Future Cost Responsibilities. Owner understands and acknowledges that the proposed development of the Property shall be subject to the payment of impact fees and Owner agrees to pay said Impact Fees if development occurs.

16. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, devisees, personal representatives, successors and assigns and shall inure to and run with the Property.

17. Amendments. This Agreement may only be amended or modified in writing signed by the parties to this Agreement.

18. Further Assurances. Each party will use its best and reasonable efforts to successfully carry out and complete each task, covenant, and obligation as stated herein. Each of the parties shall cooperate in good faith with the other and shall do any and all acts and execute, acknowledge, and deliver any and all documents so requested in order to satisfy the conditions set forth herein and carry out the intent and purposes of this Agreement.

19. Governing Law. All aspects of this Agreement shall be governed by the laws of the State of Nebraska. The invalidity of any portion of this Agreement shall not invalidate the remaining provisions.

20. Interpretations. Any uncertainty or ambiguity existing herein shall not be interpreted against either party because such party prepared any portion of this Agreement, but shall be interpreted according to the application of rules of interpretation of contracts generally.

21. Construction. Whenever used herein, including acknowledgments, the singular shall be construed to include the plural, the plural the singular, and the use of any gender shall be construed to include and be applicable to all genders as the context shall warrant.

22. Relationship of Parties. Neither the method of computation of funding or any other provisions contained in this Agreement or any acts of any party shall be deemed or construed by the City, Owner, or by any third person to create the relationship of partnership or of joint venture or of any association between the parties other than the contractual relationship stated in this Agreement.

23. Assignment. In the case of the assignment of this Agreement by any of the parties, prompt written notice shall be given to the other parties who shall at the time of such notice be furnished with a duplicate of such assignment by such assignor. Any such assignment shall not terminate the liability of the assignor to perform its obligations hereunder, unless a specific release in writing is given and signed by the other parties to this Agreement.

24. Default. Owner and City agree that the annexation and change of zone promote the public health, safety, and welfare so long as Owner fulfills all of the conditions and responsibilities set forth in this Agreement. In the event Owner defaults in fulfilling any of its covenants and responsibilities as set forth in this Agreement, the City may in its legislative authority rescind said change of zone or take such other remedies, legal or equitable, which the City may have to enforce this Agreement or to obtain damages for its breach.

25. Definitions. For purposes of this Agreement, the words and phrases “cost” or “entire cost” of a type of improvement shall be deemed to include all design and engineering fees, testing expenses, construction costs, publication costs, financing costs, and related miscellaneous costs. For the purposes of this Agreement the words and phrases “building permit”, “development”, “Impact Fee Facility”, “Impact Fee Facility Improvement”, and “site-related improvements” shall have the same meaning as provided for said words and phrases in the Impact Fee Ordinance.

26. Recordation. This Agreement or a memorandum or notice thereof shall be filed in the Office of the Register of Deeds of Lancaster County, Nebraska at Owner’s cost and expense.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year first written above.

DUBOIS LAND, LLC,
a Nebraska limited liability company

By: _____
_____, Managing Member

PRAIRIE VILLAGE NORTH, LLC
a Nebraska limited liability company

By: _____
_____, Managing Member

PRAIRIE HOME BUILDERS, INC.
a Nebraska corporation

By: _____
_____, President

RYLAND GROUP, LLC
a Nebraska limited liability company

By: _____
_____, Managing Member

THE CITY OF LINCOLN, NEBRASKA
a municipal corporation

ATTEST:

City Clerk

By: _____
Coleen J. Seng, Mayor

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this _____ day of _____, 2006, by _____, Managing Member of Dubois Land, LLC, a Nebraska limited liability company, on behalf of said limited liability company.

Notary Public

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this _____ day of _____, 2006, by _____, Managing Member of Prairie Village North, LLC, a Nebraska limited liability company, on behalf of said limited liability company.

Notary Public

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this _____ day of _____, 2006, by _____, President of Prairie Home Builders, Inc., on behalf of said corporation.

Notary Public

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this _____ day of _____, 2006, by _____, Managing Member of Ryland Group, LLC, a Nebraska limited liability company, on behalf of said limited liability company.

Notary Public

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this _____ day of _____, 2006, by Coleen J. Seng, Mayor of the City of Lincoln, Nebraska, a municipal corporation.

Notary Public